

This instrument prepared by:

Name: Graham Penn

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Miami, FL 33131

(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the [_____] day of [_____] 2023, by, between, and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "**City**"), MIAMI-DADE COUNTY, a Florida political subdivision (the "**County**"), TCH 500 ALTON, LLC, a Delaware limited liability company ("**TCH 500 Alton**"), 740 ALTON RD, LLC, a Florida limited liability company ("**740 Alton**"), [TCH 700 ALTON] LLC, a Delaware limited liability company ("**TCH 700 Alton**") and [TCH 663 ALTON] LLC, a Delaware limited liability company ("**TCH 663 Alton**").

Introduction

A. The property that is the subject of this Agreement lies in Miami Beach, Miami-Dade County, Florida. This Agreement, among other things, is intended to, and shall constitute, a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, and Section 118-4 of the City's Code.

B. TCH 500 Alton is the owner of certain property legally described on Exhibit A attached hereto and by this reference made a part hereof (the "500 Property"), which includes, without limitation, a parcel developed with a parking lot serving the Floridian condominium identified by Miami-Dade County tax folio 02-4203-001-0090 (the "Floridian Parking Property") and the commercial tract identified by Miami-Dade County tax folio 02-4203-001-0100 (the "500 Commercial Property").

C. 740 Alton is the owner of the property located at 740 Alton Road, identified by Miami-Dade County tax folio 02-4203-001-0250 and legally described on Exhibit B attached hereto and by this reference made a part hereof (the "740 Property").

D. TCH 700 Alton and TCH 663 Alton each is a wholly owned subsidiary of a joint venture among beneficial owners of TCH 500 Alton.

E. SOUTH BEACH HEIGHTS II, LLC, a Florida limited liability company ("**South Beach Heights**") is the owner of the property located at 663 Alton Road, identified by Miami-Dade County tax folios 02-4203-009-8530 and 02-4203-009-8540, and legally described on Exhibit C attached hereto and by this reference made a part hereof (the "New Health Center Property").

F. The City is the owner of the property identified by Miami-Dade County tax folio 02-4203-001-0095 and legally described on Exhibit D attached hereto and by this reference made a part hereof (the "Canopy Park Property").

G. The County is the owner of the property located at 710-720 Alton Road (the "Existing Health Center Property") identified by Miami-Dade County tax folio 02-4203-001-0270 and legally described on Exhibit E attached hereto and by this reference made a part hereof (the "Existing Health Center Property").

H. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, the Miami Beach City Charter and the Miami Beach City Code of Ordinances. The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

I. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; and, having determined that the Canopy Park Project, the Private Project and this Agreement are in compliance with the City's Comprehensive Plan and Land Development Regulations (as may be amended by the "Land Development Regulation Amendments" (as more specifically defined below)) as of the Effective Date; and, having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, the City has agreed to enter into this Agreement.

J. All capitalized terms used in this Introduction are defined in Paragraph 3 of, or elsewhere in, this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1 Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2 Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act and Section 118-4 of the City's Code.

3 Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this Paragraph 3 unless such terms are defined elsewhere in the body of this Agreement.

3.1 **"500 Alton Development Agreement"** shall mean that certain Development Agreement by and between the City and TCH 500 Alton, as successor in interest to South Beach Heights I, LLC and KGM Equities, LLC dated January 9, 2019 and recorded in Official Records Book 31323, at Page 2781 of the Public Records of Miami-Dade County, Florida.

3.2 **"Act"** shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2022)), as may be amended.

3.3 **"Building Permit"** shall mean any permit issued by the City of Miami Beach Building Department or Building Official, including any foundation, building or phase permits.

3.1 **"Business Day"** shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

3.2 **"Canopy Park Project"** shall mean the world-class public municipal park expansion and improvements to the Canopy Park Property as depicted on the Park Concept Plan attached as Exhibit X as follows:

(a) The boundary adjustment and expansion of the Canopy Park Property by 6,838 square feet through the deeding by TCH 500 Alton to the City of 10,900 square feet of the 500 Commercial Property legally described on Exhibit F attached hereto and by this reference made a part hereof (the "**New Canopy Park Property**").

(b) Improvements to the north portion of the Canopy Park Property, including improvements to integrate the park with the adjacent Private Project, and improvements to the New Canopy Park Property. The Canopy Park Project will be undertaken at the Developer's sole expense at the time of the development of the Private Project. The Developer shall be solely responsible for construction management for the improvements, including but not limited to inspecting, monitoring and overseeing construction.

3.3 "**Canopy Park Project Site**" shall mean

3.4 "**Canopy Park Sliver**" shall mean the 4,062 square feet of land within the Canopy Park Property immediately adjacent to the Floridian Parking described on Exhibit X. The Canopy Park Sliver will be transferred to TCH 700 Alton at the Second Closing to accomplish the boundary adjustment and related Canopy Park Property expansion as described in this Agreement.

3.5 "**CEI Consultant**" shall mean

3.6 "**City**" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, the City's obligations and performance is pursuant to the City's position as the owner of the Canopy Park Property acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to the City's regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City's obligations hereunder.

3.7 "**City Code**" shall mean the Code of the City of Miami Beach, Florida, as amended through the date of this Agreement.

3.8 "**City Land Development Boards**" means, collectively, the Design Review Board and the Planning Board.

3.9 **"City Manager"** means the chief administrative officer of the City, or his or her designee.

3.10 **"Closing"** shall mean the formal exchange of documents between the parties, as further described in Paragraph X of this Agreement.

3.11 **"Comprehensive Plan"** shall mean the comprehensive plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes, as amended through the date of this Agreement.

3.12 **"Construction Agreements"** means those contracts between the Developer and the contractor, architects, and engineers with whom Developer is in direct privity of contract for the construction of the Canopy Park Project.

3.13 **"Covenant in Lieu of Unity of Title"** shall mean the covenant in lieu of unity of title covering the 500 Property, the Canopy Park Property, the Existing Health Center Property [and the 740 Property] substantially in the form of Exhibit "X" attached hereto and incorporated herein by this reference. The Covenant in Lieu of Unity of Title is a modification to the Declaration of Restrictions in Lieu of Unity of Title recorded at Official Record Book 33164, Page 3948 (the **"Existing Declaration"**) of the Public Records of Miami-Dade County that expands its scope and re-assigns floor area. The existing Declaration provides that the 500 Property and Canopy Park are a "unified development site" for purposes of the City's zoning regulations. The Covenant in Lieu of Unity of Title will expand the unified development site to include the Existing Health Center Property [and the 740 Property] and will include new calculations of the maximum floor area that will apply to the expanded unified development site, re-assign floor area as contemplated in this Agreement, and include restrictions on the height, floor plate area and density for the various structures to be erected thereon. The Covenant in Lieu of Unity of Title shall not modify the permissible height, floor area, floor plate area, or density of the structure being developed on the 500 Property (the **"500 Park Building"**) and shall prohibit the short-term rental (i.e., rental for periods of less than six (6) months and one (1) day) of residential units constructed on the expanded unified development site beyond what is allowed in the Existing Declaration in relation to the 500 Park Building. All calculations included in the Covenant in Lieu of Unity of Title shall be subject to the approval of the Planning Department prior to the submission of any building permit application in respect

of the Private Project.

3.14 "**Default**" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

3.15 "**Defective Work**" means any Work or portion thereof that either Owner's Representative or the City Manager, each in consultation with the CEI Consultant, determines does not conform to the requirements of the Contract Documents.

3.16 "**Developer**" shall mean, jointly and severally, TCH 700 Alton, and its permitted successors, assigns, or heirs, and South Beach Heights. The term "Developer" shall not mean TCH 500 Alton, the City or the County and neither TCH 500 Alton, nor the City nor the County shall assume the responsibility of the Developer under this Agreement unless expressly provided in this Agreement.

3.17 "**Development Order**" shall mean any order granting, denying, or granting with conditions an application for a Development Permit.

3.18 "**Development Property**" shall mean the Floridian Parking Property, the Canopy Park Property (including the Canopy Park Sliver), the New Canopy Park Property, and the Existing Health Center Property.

3.19 "**Development Permit**" shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2022), as may be amended.

3.20 "**Effective Date**" shall mean the date provided in paragraph 7 of this Agreement.

3.21 "**Event of Default**" is defined in Paragraph 12.

3.22 "**Execution Date**" shall mean the date the last of the required parties executes this Agreement.

3.23 "**Expanded Unified Development Site**" shall mean the unified development site reflected in the Covenant In Lieu of Unity of Title.

3.24 "**Governmental Authorities**" means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer, the Canopy Park Project Site or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front

of, the Canopy Park Project Site and/or the improvements constituting the Canopy Park Project.

3.25 "**Land Development Regulations**" means Subpart B (Chapters 114 through 142) of the City Code, as the same was in effect as of the date of this Development Agreement.

3.26 "**Land Development Regulations Amendments**" shall mean amendments to the Comprehensive Plan and to the Land Development Regulations to, among other things, (a) amend the Comprehensive Plan to increase the maximum allowable intensity within the underlying future land-use designation and (b) amend the text of the Land Development Regulations to increase the maximum FAR and permitted building height in the Alton Gateway Overlay.

3.27 "**Laws**" shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the City's Comprehensive Plan and the City's Land Development Regulations.

3.28 "**New Health Center and Library**" shall mean a new facility to be located on the New Health Center Property under the terms of a separate agreement between the County, South Beach Heights and TCH 663 Alton, LLC, a Delaware limited liability company ("**TCH 663 Alton**").

3.29 "**Park Concept Plan**" shall mean the plan for the Canopy Park expansion and world-class improvements attached as Exhibit "X" attached hereto and incorporated herein by this reference.

3.30 "**Permits and Approvals**" shall mean any and all permits and approvals required to be issued by Governmental Authorities in connection with the construction of the Canopy Park Project, including the City of Miami Beach building permits, the approvals of Miami-Dade County and FDOT, and any utility access agreements with all applicable utility companies.

3.31 "**Private Project**" shall mean the improvements to be made to the Floridian Property, the Canopy Park Sliver and the Existing Health Center Property, consistent with the Land Development Regulations (as may be amended by the Land Development Regulation Amendments) to include:

(a) The development of a residential or mixed-use building not to exceed _____ square feet of floor area, 120 residential units, and 150 feet in height on the Existing Health Center Property.

(b) Pedestrian access, outdoor seating, and plaza areas serving the commercial uses on the 500 Commercial Property.

(c) The Private Project will include at least 76 parking spaces to serve the Floridian condominium.

The height of any building shall be measured from Base Flood Elevation +5 to the main roof line and any architectural projections will comply with the terms of the Land Development Regulations (as may be amended by the Land Development Regulation Amendments). The maximum total floor area shall be calculated under the City's Land Development Regulations for the purposes of determining population densities and building intensities as required by the Act.

3.32 **"Requirements"** means:

(a) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Canopy Park Project Site or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Canopy Park Project Site (including any of the foregoing relating to handicapped access, FDOT standards, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(b) the temporary and/or permanent certificate or certificates of occupancy or completion issued for the Canopy Park Project Site and Private Project as then in force.

4 **"World-class"** shall mean, with respect to the Canopy Park Project, the same or substantially similar standard of physical and operational quality for the facilities, landscaping and associated infrastructure as the following parks as of the Effective Date: Millennium Park, Chicago, Illinois; South Point Park, Miami Beach, Florida; and Soundscape Park, Miami Beach, Florida. The world-class standard shall be conclusively deemed satisfied upon the issuance of a Design Review Board approval for the Canopy Park Project. Environmental Review.

(a) Promptly following the execution of this Agreement, the Developer shall deliver to the City soil and groundwater assessments with respect to the New Canopy Park Property consistent with the assessments commissioned by TCH Alton in respect of the Canopy Park Property pursuant to the 500 Alton Development Agreement (collectively, the "Developer Environmental Assessments").

(b) From the Effective Date through the date that is one hundred and twenty (120) days after the Effective Date (the "Environmental Due Diligence Period"), the City and its third party environmental consultants (collectively, the "Environmental Consultants") shall have the right, but not the obligation, to enter and come upon the New Canopy Park Property to conduct, at the City's sole cost and expense, its own environmental due diligence (including physical inspections, tests, studies, samplings and analyses (including soil borings and invasive environmental testing)) of the New Canopy Park Property (collectively, the "City Environmental Inspections"). The City shall provide the Developer with not less than five (5) Business Days advance written notice of the date and time it or any of its Environmental Consultants seek to enter and come upon the New Canopy Park Property to conduct any Environmental Inspections thereof, and the Developer shall provide the City and its Environmental Consultants with access to the New Canopy Park Property on such date and time for such purpose.

Prior to the City or any of its Environmental Consultants entering or coming upon the New Canopy Park Property, the City shall cause its Environmental Consultants to have first obtained general liability insurance coverage insuring the Developer from and against any and all claims, demands, actions, losses, liabilities, damages, fees, costs and expenses (including, without limitation, attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) (collectively, "Claims") arising out of any activities of the Environmental Consultants while on the New Canopy Park Property. Such insurance shall: (i) be issued by an insurance company licensed in the State of Florida with an A.M. Best Rating of at least A- VIII; (ii) provide coverage for injury to or death of any person and damage to or destruction of any property in an amount not less than \$1,000,000.00 for injury or death to any one person, \$2,000,000.00 for injury or death to more than one person, and \$500,000.00 with respect to property damage; (iii) name the Developer as an additional insured; (iv) contain a severability of interest provision; (v) contain a provision that such insurance shall be primary and non-contributing with any other insurance of the Developer or of the City or of any other Environmental Consultant of the City; and (vi) include a waiver of subrogation in favor of the Developer. The City and its Environmental Consultants shall also obtain and maintain worker's compensation insurance for all of their respective employees in accordance with Florida law. The City shall cause its Environmental Consultants to deliver a certificate of insurance to the Developer evidencing compliance with the foregoing insurance requirements prior to entering or coming upon the New Canopy Park Property.

The Developer shall have the right to be present while the City and/or any of its Environmental Consultants conduct any Environmental Inspections of the New Canopy Park Property. If requested by the Developer, the City shall provide the Developer with copies of all data, reports, assessments, analysis and other information prepared by or for

the City in connection with or as a result of its Environmental Inspections of the New Canopy Park Property (collectively, the "City Environmental Assessments") promptly after such request. Upon completion of its Environmental Inspections, the City shall promptly restore the New Canopy Park Property (including, without limitation, repairing any damage to the Park Site caused by any entry upon or Environmental Inspection performed by or on behalf of the City) to the same condition as existed prior to any such Environmental Inspections.

The City shall: (i) keep the New Canopy Park Property free from any claims, liens and encumbrances arising as result of any Environmental Inspections conducted by or on behalf of the City; and (ii) discharge any such claims, liens and encumbrances (by payment, bond, indemnity or otherwise) within fifteen (15) days after the City becomes aware of the same; and (iii) solely to the extent and limits set forth in Section 768.28 of the Florida Statutes, and without waiving any rights or defenses thereunder, indemnify, defend and hold harmless the Developer from and against any and all Claims in connection with, relating to or arising out of any such claims, liens and encumbrances. Solely to the extent and limits permitted by Section 768.28 of the Florida Statutes, and without waiving any rights or defenses thereunder, the City shall indemnify, defend and hold harmless the Developer from and against any and all Claims brought, sought or incurred by or against the Developer in connection with, relating to or arising out of any negligence or willful misconduct by the City relating to (xi) the City's entering or coming upon the New Canopy Park Property, and/or (xii) any Environmental Inspections conducted by or on behalf of the City, whether any of the foregoing arise or occur prior to, on or after the Effective Date. This paragraph shall survive the expiration or any earlier termination of this Agreement.

If the City fails to conduct its Environmental Inspections, or fails to deliver to the Developer the City Environmental Assessments, prior to the expiration of the Environmental Due Diligence Period, then the City shall have waived its right to object to the environmental condition of the New Canopy Park Property, except for any environmental condition of the New Canopy Park Property disclosed in the Developer Environmental Assessments. This paragraph shall survive the expiration or any earlier termination of this Agreement.

(c) The Developer shall remediate all hazardous substances within the New Canopy Park Property identified in the Developer Environmental Assessments and/or in any timely delivered City Environmental Assessments as follows (the obligations of the Developer set forth in subparagraphs (i) through (iv) below are referred to herein collectively as the "**Environmental Contingency**"):

(i) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any arsenic within the New Canopy Park Property that is in violation of any environmental laws, rules, regulations or standards

applicable to the use of the New Canopy Park Property as a public municipal park in the City of Miami Beach, then the Developer shall deliver to the City on or before the Second Closing a bond, letter of credit, or similar security reasonably acceptable to the City in an amount equal to the cost of remediating the Park Site for such arsenic (the "New Park Property Arsenic Surety").

(ii) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any hazardous substance (other than arsenic) within the New Canopy Park Property that is in violation of any environmental laws, rules, regulations or standards applicable to the use of the New Canopy Park Property as a public municipal park in the City of Miami Beach, then the Developer shall remediate the New Canopy Park Property for such hazardous substances prior to the Second Closing (the "Hazardous Substance Environmental Contingency").

(iii) If the Developer Environmental Assessments and/or any timely delivered City Environmental Assessments identifies any arsenic within the New Canopy Park Property that is in violation of any environmental laws, rules, regulations or standards applicable to the use of the New Canopy Park Property as a public municipal park in the City of Miami Beach, then the Developer shall remediate the New Canopy Park Property for such arsenic prior to conveying the completed New Canopy Park Property to the City. If the Developer fails to remediate the Park Site for arsenic prior to conveying the completed New Canopy Park Property to the City, and such failure is not cured by Developer within any applicable notice and cure period, then the City may draw on the New Park Property Arsenic Surety for the purpose of remediating the New Canopy Park Property for such arsenic.

(iv) For purposes of this Agreement, the term "remediate" (and words derivative thereof or of similar import such as "remediation") shall mean all actions necessary to obtain regulatory closure of the remediation at issue with conditions from Miami-Dade County Department of Regulatory and Economic Resources – Division of Environmental Resources Management ("DERM") and/or any other agency, department or governmental authority having jurisdiction over such remediation (any other agency, department or governmental authority having jurisdiction over such remediation is referred to herein as an "Applicable Environmental Agency"). Such conditional closure shall allow for recordation of a covenant in favor of Miami-Dade County and/or any other Applicable Environmental Agency against title to the New Canopy Park Property that provides for implementation of an approved engineering control (such as a clean soil cap) and, if necessary, prohibits use of groundwater for consumption or irrigation. In addition, the Developer may also, in its sole and absolute discretion, elect to remediate in full or in part by seeking approval from DERM and/or any other Applicable Environmental Agency of "Alternative Cleanup Target Levels" or by conducting source removal. In the event that

the Developer elects to pursue conditional closure for soils on the New Canopy Park Property based in part or in full on the use of an engineering control, the Developer shall be required to obtain approval from DERM and/or any other Applicable Environmental Agency of an "Engineering Control Plan" with respect to such engineering control. The Developer's obligations under this Paragraph 4 (i.e., satisfaction of the Hazardous Substance Environmental Contingency and/or satisfaction of the Environmental Contingency (as applicable)) shall be deemed complete upon issuance by DERM and/or any other Applicable Environmental Agency of correspondence indicating that no further remediation is required with respect to the New Canopy Park Property. Prior to the Second Closing, the Developer shall have the right to execute and record any and all agreements, documents and/or instruments against title to the New Canopy Park Property in connection with its remediation of the New Canopy Park Property. After the second Closing, the City shall promptly execute and deliver to the Developer (and the Developer shall have the right to thereafter record against title to the New Canopy Park Property) any and all agreements, documents and/or instruments requested by the Developer in connection with its remediation of the New Canopy Park Property, subject to the City's right to approve any such agreements, documents and/or instruments, which approval shall not be unreasonably withheld, conditioned or delayed.

5 Submittal of Design Review Board and Planning Board Applications.

(a) The Developer acknowledges that development of the Private Project will require design review approval by the City's Design Review Board and conditional use approval by the City's Planning Board (collectively, the "**Private Project Zoning Approvals**"), and that development of the Canopy Park Project will require design review approval by the City's Design Review Board (the "**Canopy Park Zoning Approval**"). Collectively, the Private Project Zoning Approvals and Canopy Park Zoning Approval are the "**Project Zoning Approvals.**"

(b) The Developer shall prepare applications requesting the Project Zoning Approvals (collectively, the "**Project Zoning Applications**"). The preparation of the Project Zoning Applications shall be at the sole cost and expense of the Developer, in accordance with all City requirements, and shall include proposed plans sufficiently developed to permit the City's Design Review Board or Planning Board (as applicable) to act on the Project Zoning Applications. Medical cannabis treatment centers/dispensaries shall not be permitted within the Development Property.

(c) The City shall execute the Canopy Park Zoning Approval application as the owner of the Canopy Park Property, provided that the development requested in the application conforms with the Canopy Park Project, including the Park Concept Plan, as defined in this Agreement.

(d) The County shall execute the Private Project Zoning Approvals applications as owner of the Existing Health Center Property. The City shall execute the Private Project Zoning Approvals applications as the owner of the Canopy Park Sliver. The County and City execution of the Private Project Zoning Approval application are contingent on the applications conforming with this Agreement, including without limitation the specifications of the Private Project set forth herein.

(e) The City Commission, in its proprietary capacity, has approved the Canopy Park Concept Plan as set forth in **Exhibit "X"** attached hereto and incorporated herein by this reference. The Developer shall prepare an application requesting the Park Zoning Approval (the "**Canopy Park Zoning Application**"). The proposed Canopy Park Project in the Canopy Park Zoning Application must be substantially similar in all material respects to the Canopy Park Concept Plan as set forth in **Exhibit "X"** attached hereto and incorporated herein by this reference unless the City Commission, in its proprietary capacity, approves such material changes. If the City's Planning Director determines that the proposed Canopy Park Project in the Park Zoning Application is not substantially similar in all material respects to the Canopy Park Concept Plan as set forth in **Exhibit "X"** attached hereto and incorporated herein by this reference, then such substantial and material changes shall be subject to the City Commission's approval, in its proprietary capacity, prior to the Canopy Park Zoning Application being heard by the City's Design Review Board.

(f) The Developer shall file the Project Zoning Applications with the City within six (6) months after the Effective Date. The Developer acknowledges that review of the Project Zoning Applications by the City and the City Land Development Boards is quasi-judicial, and that nothing in this Agreement obligates the City to approve the Project Zoning Applications or limits the quasi-judicial authority of the City and the City Land Development Boards to impose conditions or take any action on the Project Zoning Applications as provided by the City Code. If either or both of the Project Zoning Applications is or are denied by the City or the City Land Development Boards, or if either or both of the Project Zoning Approvals contain any terms, conditions or obligations not consistent with the terms and conditions of this Agreement or otherwise unacceptable to Developer in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised Project Zoning Applications requesting the Project Zoning Approvals for a revised Canopy Park Project and/or Private Project that still conforms with the Canopy Park Project and/or Private Project, as applicable, as defined in this Agreement; (ii) exercise any rights of appeal the Developer may have; or (iii) terminate this Agreement in accordance with Paragraph 18 of this Agreement.

(g) Although the Private Project Zoning Applications will be separate applications from the Canopy Park Zoning Application, it is the express intent of the parties that the

Project Zoning Application and the Park Zoning Application will all be scheduled before and heard by the City's Design Review Board on and at the same meeting date.

PERMITTING

6 Prerequisites to Building Permits for Private Project. The Developer acknowledges that until the Second Closing, the City remains the owner of the Canopy Park Sliver and the County remains the owner of the Existing Health Center Property and that no application for a Building Permit for the Private Project may lawfully be approved without the joinder of both the City and the County. No Building Permit for the Private Project may issue until the Second Closing as described below.

7 Effective Date; First Closing. Prior to the issuance of a building permit for the New Health Center and Library on the New Health Center Property on a date determined by Developer in a written notice of effective date to the City and County not less than sixty (60) days prior to such date, which date shall in any event be no later than one hundred twenty (120) days from the date the City Development Board approvals have been issued for both the Canopy Park Project and Private Project and the expiration of all appeal periods with no appeals having been filed (or, in the event an appeal is filed, the same has been resolved (by judgment or otherwise) on terms and conditions acceptable to the Developer in its sole and absolute discretion)(the "**Effective Date**"), this Agreement will become effective and the following shall occur simultaneously (the "First Closing"):

- (a) South Beach Heights will deed the New Health Center Property to TCH 663 Alton; and
- (b) TCH 500 Alton will deed the Floridian Parking Property to TCH 700 Alton; and
- (c) The Covenant in Lieu of Unity of Title will be executed by TCH 700 Alton, [740 Alton], TCH 500 Alton, the City, and County.
- (d)

8 Second Closing. Upon the substantial completion of the New Health Center and Library on the New Health Center Property, the County or TCH 700 Alton will provide notice to the City and the following shall occur at mutually agreeable dates:

- (a) TCH 663 Alton will deed the New Health Center Property to the County; and
- (b) The County will deed the Existing Health Center Property to TCH 700 Alton; and

(c) The City will convey the Canopy Park Sliver to TCH 700 Alton via quit claim deed in a form substantially in accordance with Exhibit X; and

(d) TCH 500 Alton will convey the New Canopy Park Property to the City in fee simple, free and clear of all liens and encumbrances other than any permitted exceptions acceptable to the City, by special warranty deed, in a form substantially in accordance with Exhibit X, and the City will execute an easement in a form substantially in accordance with Exhibit X in favor of TCH 700 Alton over the Canopy Park Property and the New Canopy Park Property for development and construction of the Canopy Park Project ("Canopy Park Construction Easement"), provided, such Canopy Park Construction Easement shall stipulate that the development and construction of the Canopy Park Project shall be conducted so as to minimally disrupt the operation or use of the Canopy Park Property; and

(e) The parties will provide any necessary easements to allow for the integration of Canopy Park and the Private Project; and

(f) The City will execute an easement in a form substantially in accordance with Exhibit X in favor of TCH 500 Alton over a portion of the New Canopy Park Property not to exceed 6,838 square feet for pedestrian access for the uses on the 500 Commercial Property; and

(g) Developer will deliver, at its election, either:

(i) a written tri-party agreement among Developer, the City and the lender providing a construction loan for the construction of the Canopy Park Project (the "Canopy Park Lender"), in form and substance reasonably acceptable to the City (the "Recognition Agreement"), pursuant to which the Canopy Park Lender agrees, among other terms, to (A) fund the then remaining "Canopy Park Construction Amount" (as hereinafter defined) directly to the City in the event of any Canopy Park Related Default (as hereinafter defined) by Developer under this Agreement which is not cured by Developer within any applicable notice and cure period, (B) fund the then remaining Canopy Park Construction Amount by way of monthly draws pursuant to the draw procedure set forth in the construction loan documents, and (C) fund such then remaining Canopy Park Construction Amount directly to the City pursuant to (A) and (B) above, notwithstanding that the Developer may be in default of its construction loan with the Canopy Park Lender; or

(ii) a letter of credit (the "Letter of Credit") in an amount equal to the Canopy Park Construction Amount, which Letter of Credit (A) is unconditional, irrevocable, and payable to City on sight at an office of the issuing financial institution in a

single draw equal to the then remaining Canopy Park Construction Amount, (B) is in form and content reasonably acceptable to the Developer and the City, and (C) shall contain an "evergreen" provision which provides that the Letter of Credit is automatically renewed on an annual basis (unless the issuer delivers sixty (60) days' prior written notice of cancellation to City) until the Canopy Park Project has been completed and accepted by the City, and which the City shall have the right to present for payment in accordance with its terms in the event (Y) of any Canopy Park Related Default by Developer under this Agreement which is not cured by Developer within any applicable notice and cure period, or (Z) the Developer fails to provide the City with any renewal or replacement letter of credit complying with the terms of this Agreement at least thirty (30) days prior to the expiration of the then-current Letter of Credit where the issuer of such Letter of Credit has advised the City of its intention not to renew the same.

(iii) For purposes of this Agreement, the term: (A) "Canopy Park Construction Amount" shall mean the guaranteed maximum price set forth in the Construction Agreements for the then-remaining design and construction of the Canopy Park Project, plus the City's estimated oversight/inspection costs, or if the Developer has not executed the Construction Agreements as of the Second Closing, an amount equal to one hundred percent (100%) of the City's estimate of the then-remaining cost to complete the design and construction of the Canopy Park Project; and (B) "Canopy Park Related Default" shall mean the failure of the Developer to construct the Canopy Park Project in accordance with the terms and conditions of this Agreement. If the Developer elects to deliver the Letter of Credit, then the Developer shall have the right to reduce the amount of the same to the then remaining Canopy Park Construction Amount on a calendar quarter basis. The right to draw funds under the Recognition Agreement or Letter of Credit (as applicable) shall be the City's sole and exclusive remedy with respect to a Park Related Default, other than the failure of the Developer to satisfy the Environmental Contingency (i.e. to remediate the New Canopy Park Property in accordance with subparagraphs 4(c)(i) through (iv) of this Agreement). If (A) the City draws any funds under the Recognition Agreement or Letter of Credit (as applicable) and (B) the Developer has satisfied the Environmental Contingency, then all conditions precedent to the issuance of a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Private Project (whether in whole or in part) shall be deemed satisfied, and the Developer shall have the right to apply for a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for the Private Project (whether in whole or in part) whether or not construction of the Canopy Park Project has been completed or accepted by the City, in which case, the City's issuance of a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion for Private Project (whether in whole or in part) shall only be subject to such regulatory approvals that may be required by any agencies having jurisdiction over the Private Project

(or such part thereof for which a temporary certificate of occupancy, final certificate of occupancy, and/or certificate of completion is sought).

(iv) If the Canopy Park Lender refuses to enter into a Recognition Agreement for any reason whatsoever, or if the form or substance of the Recognition Agreement is not reasonably acceptable to the City, then the Developer shall be required to deliver the Letter of Credit in lieu of the Recognition Agreement; and

(h) The Developer will execute and record the Hold Harmless Agreement substantially in the form of Exhibit X attached hereto and incorporated herein by this reference.

9 Issuance of Permits for Canopy Park Project and Private Project. Following the Second Closing, permits for the Canopy Park Project and the Private Project may be issued by the City. The foregoing shall not be construed to impose any obligation upon the City, in its regulatory capacity, to issue permits for the Canopy Park Project or the Private Project if the Developer does not satisfy all requirements for the issuance thereof.

10 Processing of Canopy Park Permits and Construction. The Developer shall be solely responsible for the design, permitting and construction of the Canopy Park Project, at the Developer's sole cost and expense. The City agrees to execute any and all applications as owner of the Canopy Park Property. The Developer shall execute a contract for the design of the Canopy Park Project pursuant to the Canopy Park Zoning Approval with a Florida licensed architecture/engineering firm (the "**Canopy Park Design Contract**"), unless the Developer elects to execute a design-build contract for the Park Project pursuant to the Park Zoning Approval as provided below. The Developer shall execute a contract for the construction of the Canopy Park Project pursuant to the Canopy Park Zoning Approval with a Florida licensed contractor or, alternatively, the Developer may, in its sole and absolute discretion, execute a design-build contract for the design and construction of the Park Project pursuant to the Park Zoning Approval (the "**Park Contractor**"), which contract may be a stand-alone construction or design-build contract with a guaranteed maximum price for the Park Project, or an addendum to or component of a construction or design-build contract related to both the Project and the Park Project (the "**Park Construction Contract**"). The Park Design Contract and Park Construction Contract shall, among other things: (a) require that the City to be named as an additional or named insured on all insurance coverages required by the Park Design Contract and Canopy Park Construction Contract and under which the Developer is an additional or named insured; (b) require that the City be named a co-obligee under payment and performance bonds as set forth in the Canopy Park Construction Contract; (c) be assignable to the City in the event of a default by the Developer under the Canopy Park Design Contract, Canopy Park Construction Contract or this Agreement (which assignment shall

include, with respect to the Canopy Park Design Contract, an assignment or express right to use the plans, specifications and drawings for the Canopy Park Project); (d) contain usual and customary warranties by the Park Contractor (including a warranty against defective workmanship for a period of not less than one year following substantial completion of the Canopy Park Project); (e) name the City as an intended third-party beneficiary with respect to all warranties included in the Canopy Park Design Contract and Canopy Park Construction Contract; and (f) provide the City with the same indemnification protections as afforded the Developer under the Canopy Park Design Contract and Canopy Park Construction Contract. Except as expressly specified in this Agreement, in no event shall City be responsible for paying or otherwise reimbursing the Developer or the Park Contractor for any costs to design, develop or construct the Park Project.

After the issuance of the Canopy Park Zoning Approval, Developer shall prepare construction documents for the Canopy Park Project and, upon completion of the same, the Developer shall submit them to the City Manager for the sole and limited purpose of verifying that the Canopy Park Project set forth therein is substantially in accordance with the Canopy Park Zoning Approval. The City Manager shall review and either approve or reject such construction documents within ten (15) Business Days after receipt of the same. If the City Manager fails to approve or reject such construction documents within such ten (15) Business Day period, then such construction documents shall be deemed approved by the City Manager. However, if the City Manager timely rejects such construction documents, it shall give the specific and detailed reasons for such rejection; in which event, the Developer shall revise the construction documents for the Canopy Park Project so that they are substantially in accordance with the Canopy Park Zoning Approval and then re-submit them to the City Manager pursuant to the foregoing process until such construction documents have been or are deemed to have been approved by the City Manager (such construction documents, once approved or deemed approved by the City Manager, are referred to herein as the "**Approved Canopy Park Plans**"). Prior to commencement of any construction of the Canopy Park Project, the Developer shall submit to the City Manager any proposed modifications to the Approved Canopy Park Plans (which shall be indicated by "ballooning," highlighting, blacklining or describing such modifications in reasonable detail) for the sole and limited purpose of verifying that the Canopy Park Project set forth therein is substantially in accordance with the Canopy Park Zoning Approval. The City Manager shall review and either approve or reject the proposed modifications within ten (15) Business Days after receipt of the same. If the City Manager fails to approve or reject such proposed modifications within such ten (15) Business Day period, then such proposed modifications shall be deemed approved by the City Manager. However, if the City Manager timely rejects such proposed modifications, it shall give the specific and detailed reasons for such rejection; in which event, the Developer shall revise the proposed modifications so that they are substantially in accordance with the Canopy

Park Zoning Approval and then re-submit them to the City Manager pursuant to the foregoing process until such proposed modifications have been or are deemed to have been approved by the City Manager (such proposed modifications, once approved or deemed approved by the City Manager, shall become part of the "**Approved Canopy Park Plans**"). Any dispute regarding the City Manager's rejection of the construction documents or any proposed modification thereof must be resolved prior to the commencement of the construction of the Canopy Park Project and, in the event of any such dispute, all time periods set forth in this Agreement shall be tolled until the dispute is resolved by the Developer and the City.

After the issuance of a building permit for the Canopy Park Project, the Developer shall construct, at its sole cost and expense, the Canopy Park Project substantially in accordance with the Canopy Park Zoning Approval and Approved Canopy Park Plans.

11 Upon the commencement of construction of the Canopy Park Project, the Developer shall use good faith efforts to keep the City reasonably apprised of the progress of the construction of the Canopy Park Project, including advising the City of meetings between the Developer and the Park Contractor concerning the construction of the Canopy Park Project. The City may, from time-to-time, designate on written notice to the Developer one or more employees or agents to be the City's representative (a "**City's Representative**") who may (a) review all contracts, plans, specifications and shop drawings relating to the construction of the Canopy Park Project (collectively, the "**Construction Documents**"), whether kept at Developer's offices or at the construction trailer for the Canopy Park Project, (b) attend all meetings between the Developer and the Park Contractor concerning the construction of the Canopy Park Project, and (c) enter the Canopy Park Construction Easement to monitor the construction of the Canopy Park Project; subject, however, to the following conditions and limitation (x) the City's and the City Representative's review of any such Construction Documents and/or entry on to the Canopy Park Construction Easement to monitor the construction of the Canopy Park Project shall be on not less than forty-eight (48) hours prior written notice to the Developer and conducted during normal business hours on Business Days, (y) the Developer shall have the right to have a representative present at all times while the City and/or the City Representative review any such Construction Documents or is on the Canopy Park Construction Easement to monitor the construction of the Canopy Park Project, and (z) the City and the City Representative, while on the Canopy Park Construction Easement, shall comply with all safety and other requirements imposed by the Canopy Park Lender, the Park Contractor and any insurance company insuring the Developer, the Park Contractor, and/or the construction of the Canopy Park Project. Notwithstanding the foregoing: (aa) the City hereby acknowledges, agrees and confirms that the foregoing rights of review, attendance, entry and monitoring granted to the City and the City Representative in this

Paragraph shall not grant the City or the City Representative any approval rights whatsoever with respect to any aspect of the construction of the Canopy Park Project; and (bb) the Developer acknowledges, agrees and confirms that the foregoing rights of review, attendance, entry and monitoring granted to the City and the City Representative in this Paragraph shall be exercised (if at all) in the sole and absolute discretion of the City and shall not, in any way, be construed, interpreted and/or constitute an assumption by the City of any of the Developer's or the Park Contractors' obligations in connection with the construction of the Canopy Park Project.

12 Canopy Park Project Staging/Maintenance of Traffic. The Developer shall cause the Park Contractor to prepare logistics, access staging and maintenance of traffic plans for the Canopy Park Project, which plans shall be subject to the City Manager's approval, which may be granted or withheld in the City Manager's sole discretion. The plans shall contain specific procedures for minimizing disruption to (a) existing park operations, (b) other surrounding operations and businesses, (c) inconvenience to the public and residents in the surrounding areas, such as residents and visitors who must traverse the area in and around the Canopy Park Project site to access the Canopy Park Property, their residences, hotels, or other businesses. The Developer shall schedule the progress of the work so as to minimize any lane closures, and in coordination with and as approved by FDOT and the City, shall schedule any required lane closures at night and/or during low impact periods.

13 Art In Public Places. The Developer shall comply with the City's Art In Public Places (the "AIPP") program requirements under Section 82-536 through 82-612 of the City Code (as applicable) and shall contribute to the City's Art in Public Places fund the total of 2.0% of the "construction cost" (as such term is defined in Section 82-537 of the City Code) of the Canopy Park Project (the "Canopy Park Public Art Funds") no later than the date of execution of a construction contract for or that includes the construction of the Canopy Park Project, as required by the City Code.

14 Default. Each of the following shall be an "**Event of Default**" by the Developer hereunder:

(a) If the Developer shall fail to substantially complete and turn over the New Health Center and Library and/or the New Canopy Park Project within five (5) years from the Effective Date.

(b) If the Developer shall fail to observe or perform any term, covenant or condition of this Agreement on the Developer's part to be observed or performed and the Developer shall fail to cure or remedy the same within i) thirty (30) days of the Developer's receipt of written notice from the City with respect to monetary defaults, or (ii) sixty (60) days of the Developer's receipt of written notice from the City with respect to non-

monetary defaults (each, a "**Default Notice**"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within such sixty (60) day period, then the Developer shall have such additional time as is necessary to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Developer commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion.

(c) If the Developer shall make an assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due; or shall consent in writing to the appointment of a receiver or trustee or liquidator of all or substantially all of its property; or if all or substantially all of the assets of the Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, and the same is not dismissed, discharged or satisfied within one hundred fifty (150) days after such attachment, seizure, subjection or levy occurs.

(d) If the Developer shall commence a voluntary case under the Title 11 of the United States Code (the "**Bankruptcy Code**"); or an involuntary proceeding is commenced against the Developer under the Bankruptcy Code and the same is not dismissed or stayed within one hundred fifty (150) days after the commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of the Developer in any proceeding under the Bankruptcy Code and such custodian is not discharged or dismissed within one hundred fifty (150) days after such appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian in any proceeding under the Bankruptcy Code; or the Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect (an "**Other Insolvency Proceeding**") relating to the Developer; or there is commenced against the Developer any such Other Insolvency Proceeding and the same is not dismissed or stayed within one hundred fifty (150) days; or a custodian, trustee or person of similar capacity is appointed for or takes charge of all or substantially all of the property of the Developer in any such Other Insolvency Proceeding and such custodian, trustee or person of similar capacity is not discharged or dismissed within one hundred fifty (150) days after such appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian, trustee or person of similar capacity in any such Other Insolvency Proceeding.

In the event the City shall claim any Event of Default shall have occurred under this Agreement, the City's Default Notice shall state with specificity the provisions of this Agreement under which the Event of Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement (if applicable), and, if elected by the City, that the failure of the Developer to

cure such Event of Default by the date set forth in such Default Notice will result in the City having the right to terminate this Agreement.

15 Enforcement of Performance; Damages; and Termination. If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within the applicable notice and cure period, the City may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:

- (a) Enforce strict performance by the Developer;
- (b) Terminate this Agreement; or
- (c) Pursue any other remedy available to the City at law or in equity.

The City's election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

In the event the City elects to terminate this Agreement after the occurrence of an Event of Default that was not cured within any applicable notice and cure period, and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the City shall have the right, at its election, to terminate this Agreement with five (5) Business Days' written notice to the Developer, the Developer as debtor in possession, or if a trustee has been appointed, to such trustee.

Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall the Developer be liable to the City or any other person for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any Event of Default by the Developer under this Agreement; provided, however, if an Event of Default occurs under this Agreement by reason of the Developer's failure to satisfy the Environmental Contingency as required by this Agreement, then the Developer shall be liable to the City for all actual fees, costs and expenses paid or incurred by the City in satisfying the Environmental Contingency as required by this Agreement.

If the City or any of its boards, departments or agencies violates, breaches or defaults on any term, covenant, condition or other provision of this Agreement (a "**City Default**"), then the Developer shall have all rights and remedies available to it under this Agreement, at law and/or in equity (including, without limitation, an action for specific performance and injunctive relief to enforce the terms, covenants, conditions and other

provisions of this Agreement) against the City and its boards, departments and agencies as a result of or arising out of such City Default. The Developer's election of a right or remedy under this Agreement, at law and/or in equity with respect to any City Default shall not limit or otherwise affect the Developer's right to elect any other right or remedy available to it under this Agreement, at law and/or in equity with respect to the same or any other City Default. Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall the City be liable to the Developer or any other person for any indirect, special, incidental, consequential, punitive, economic damages (including, without limitation, diminution of property value) lost profits or similar damages, whether or not foreseeable or advised of the possibility of the same, in connection with, arising from or as a result of any City Default.

16 Completion of Park Improvements, Third Closing, and Issuance of Temporary Certificate of Occupancy for Private Project. Except as expressly provided in this Agreement, the Developer shall not apply for, and the City shall not issue any temporary certificate of occupancy, final certificate of occupancy and/or certificate of Completion for the Private Project (in whole or in part) until the Developer has(a) satisfied the Environmental Contingency (if not yet satisfied), (b) completed the Canopy Park Project substantially in accordance with the Canopy Park Zoning Approval and the Approved Park Plans (as evidenced by the issuance of a temporary certificate of occupancy, a final certificate of occupancy or a certificate of completion for the Canopy Park Project that individually or collectively encompass the entire Canopy Park Project), (c) recorded a termination of easement in respect of the Canopy Park Construction Easement and (d) completed the New Health Center and Library and given possession thereof to the County.

17 GENERAL PROVISIONS Effective Date; Duration; and Term.

(a) Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the Developer shall record this Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after (1) it has been recorded in the Public Records of Miami-Dade County, Florida, (2) the City Development Board approvals have been issued for both the Canopy Park Project and Private Project and the expiration of all appeal periods with no appeals having been filed (or, in the event an appeal is filed, the same has been resolved (by judgment or otherwise) on terms and conditions acceptable to the Developer in its sole and absolute discretion) and (3) Developer has provided the requisite notice of effective date as contemplated by Paragraph 7.

(b) The Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

(c) This Agreement shall run for an initial term of five (5) years from the Effective Date (the "**Term**"); provided, however, if the Developer completes construction of the New Health Center and Library as well as Canopy Park Project within the initial term, failure of which will be deemed an Event of Default, then the Term shall automatically be extended (without the need of any notice to or consent of the City, or being subject to any public hearing) for an additional ten (10) years (so that the Term of this Agreement shall be a total of fifteen (15) years from the Effective Date). Except for the automatic ten (10) year extension of the Term set forth above (which does not require any consent of the City or public hearing): (i) the Term of this Agreement may be extended only by the mutual consent of the City and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and (ii) consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

18 Termination Outside of Default. If Developer exercises its right to terminate this Agreement under Paragraph 5(f) this Agreement (apart from the City's right to terminate under Paragraph 15 of this Agreement as a result of an Event of Default by Developer), each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, the Private Project and the Canopy Park Project, and neither party shall have or owe any further obligation or liability to the other party.

19 Development Laws Governing this Agreement. For the entire Term of this Agreement, the City hereby agrees that the City's Land Development Regulations (as may be amended by the Land Development Regulation Amendments) governing the development of the Development Property as they exist as of the Execution Date of this Agreement shall govern the development of the Development Property during the entire Term of this Agreement. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies of general applicability to the Development Property (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Private Project.

20 Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect

on the Effective Date shall not relieve the Developer of the necessity of complying with any such permit, approval, procedure, condition, fee, term or restriction, subject however to the terms and provisions of this Agreement.

21 Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under any applicable law, rule or regulation and each party hereto reserves any and all of such rights.

22 Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Development Property are consistent with the City's Comprehensive Plan and Land Development Regulations (as may be amended by the Land Development Regulation Amendments), subject to all applicable requirements, permits and approvals.

23 Concurrency. The Developer shall be solely responsible for obtaining all land use permits for the Private Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2022), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "**Concurrency Requirements**"). Prior to applying for the full building permit for the Private Project, the Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that the Developer has satisfied all applicable Concurrency Requirements with respect to the Private Project and the Canopy Park Project, and shall diligently and in good faith obtain such letters or other evidence that the Private Project and Canopy Park Project meet all applicable Concurrency Requirements, and shall pay such impact fees or mobility fees as may then be due or applicable to meet Concurrency Requirements.

24 Permitted Development.

(a) Permitted Development and Uses. The Property is to be designated as Medium Intensity Commercial Category (CD-2) according to the City's adopted Comprehensive Plan Future Land Use Map. The Property is to be zoned CD-2 Commercial, Medium Intensity by the City's Land Development Regulations. Subject to the restrictions set forth in the Covenant in Lieu of Unity of Title, the CD-2 zoning district for the Property permits apartments; religious institutions with an occupancy of 199 persons or less; and alcoholic beverages establishments. The Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the by the City's Land Development Regulations and Comprehensive Plan.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the City's Land Development Regulations, Comprehensive Plan and any applicable Federal, State or County laws, rules and regulations. Subject to the restrictions set forth in the Covenant in Lieu of Unity of Title, the CD-2 land use designation, the maximum residential density is 100 dwelling units per acre.

25 Public Facilities to Serve the Property. A description of the public facilities that will service the Property, including who shall provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development of the Property, is set forth in Exhibit "AA" attached hereto and incorporated herein by this reference.

26 Required Development Permits. A listing and description of all local development permits approved or needed to be approved for the development of the Project and the Park Project is set forth in Exhibit "BB" attached hereto and incorporated herein by this reference.

27 Strict Performance; Waiver. No failure by the City or the Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default hereunder shall constitute a waiver of any such default or of such other covenant, agreement, term or condition hereunder.

28 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

With a copy to: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Attorney

If to the Developer at: TCH 700 Alton, LLC
TCH 663 Alton, LLC
3310 Mary Street

Suite 302
Attn: David Martin

With a copy to:

Bercow Radell Fernandez Larkin
& Tapanes, PLLC
200 S. Biscayne Boulevard
Miami, Florida 33131
Attn: Michael W. Larkin

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) Business Days after deposit in the U.S. mails. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

29 Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The Developer and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND THE DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

30 Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

31 Time of Essence. Time shall be of the essence for each and every provision hereof.

32 Entire Agreement. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.

33 Other Agreements. This Agreement has no effect on any other agreement, the City's development orders, or declaration of restrictions otherwise encumbering the Development Property or any portion thereof or the 500 Property or any portion thereof. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

34 Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Development Property shall run with and bind the Development Property as covenants running with the Development Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

35 Transfer and Assignment. The Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the satisfaction or deemed satisfaction of the conditions set forth in subparagraphs 17(a) through (d) of this Agreement without the prior written consent of the City (which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the City), except as hereinafter provided. The Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the Property to any person or entity (a "**Subsequent Owner**") and assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any Subsequent Owner in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City, provided that a "Developer Principal" (as more specifically defined below) shall at all times (a) hold, directly or indirectly, not less than a Controlling Interest (as defined below) in the [Development Site], (b) serve, directly or indirectly, as a manager of the entity that is developing the Project and the Park Project, and (c) exercise, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project and the Park Project; provided, further, that this Agreement and the rights and obligations hereunder can be assigned and transferred to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Foreclosure Purchaser**") who acquires the Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent

or approval of the City. This Paragraph 35 and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur (y) the satisfaction or deemed satisfaction of the conditions set forth in subparagraphs 16(a) through (c) of this Agreement, or (z) the acquisition of the Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure; whereupon, the Developer, any Subsequent Owner and/or any Foreclosure Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the City whether or not a Developer Principal (aa) holds, directly or indirectly, any ownership interest in the Development Site, (bb) serves, directly or indirectly, as a manager of the entity that is developing the Project and the Park Project, or (cc) exercises, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project or the Park Project. Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of the Developer under this Agreement at the time of such assignment or transfer of this Agreement. For purposes of this Paragraph 35 the term "**Developer Principal**" shall mean: (yy) David Martin and/or (zz) David Martin. A "**Controlling Interest**" shall mean_[TBD].

36 Force Majeure and Third-Party Challenges. All time periods set forth in this Agreement and in any approval or permit issued in connection with the Canopy Park Project and/or the Private Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, hurricanes and severe weather, and other causes beyond the control of either party), during the pendency of any "Lawsuit" (as hereinafter defined) and any unexpired appeal period thereof. In the event that a third party unrelated to or unaffiliated with the City or the Developer institutes any action, suit or proceeding relating to the Canopy Park Project and/or the Private Project, including, without limitation, any action, suit or proceeding challenging the validity or issuance of the approvals for the Canopy Park Project or Private Project or any Building Permit (in each instance, including any related appeals, a "**Lawsuit**"), then the Developer shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the City. The Developer shall further indemnify and hold the City harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

37 Indemnification of City. The Developer shall indemnify, defend and hold harmless the City from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the City in any action, suit or proceeding brought against the City by any third-party as a result of any negligent act or omission of the Developer and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. The Developer shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the City, using legal counsel reasonably acceptable to the City, pursuant to the foregoing. The City shall reasonably cooperate and collaborate (but at no expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

38 Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of the Developer, the City, or any successor or assign of any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

39 No Third-Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowner's association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third-party beneficiary of any provisions hereof.

40 No Conflict of Interest. The Developer represents and warrants that no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. The Developer represents and warrants that no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from the Developer.

41 Limitations of Liability and Waiver of Consequential Damages.

(a) Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.

(b) The City will not in any event whatsoever be liable for any injury or damage to the Developer (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), nor for any injury or damage to the Development Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), caused by the use, misuse or abuse of the City's public right of way (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).

(c) Except as may be otherwise expressly provided herein, no approval to be made by the City in its proprietary capacity under this Agreement or any inspection of the Canopy Park Project or Private Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.

(d) No member, official, elected representative or employee of the City shall be personally liable to the Developer or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the City or for any amount which may become due to the Developer or successor, assign or heir thereof under this Agreement.

42 Police Power.

(a) The parties recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Project Approvals, the Private Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.

(b) The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of

the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Development Property.

Draft

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

CITY OF MIAMI BEACH,
a Florida municipal corporation

Print Name: _____

Print Name: _____

By: _____

Name: _____

Attest: _____
City Clerk

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____day of _____, 2023, by _____, as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

Signed, sealed and delivered
in the presence of:

_____,
a Florida limited liability company

Print Name: _____

Print Name: _____

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____day of _____, 2023, by _____, as Manager of _____, a Florida limited liability company, on behalf of the Company. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

TABLE OF EXHIBITS

[to be inserted]

Draft

EXHIBIT "AA" - DESCRIPTION OF PUBLIC FACILITIES

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Miami- Dade County, the City of Miami Beach, and such other governmental entities as may presently operate public transportation services within the City of Miami Beach. Sanitary sewer, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, the City of Miami Beach, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the Miami-Dade Public Schools District, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Miami Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Miami-Dade County, by the State of Florida, by Miami-Dade County, and by the City of Miami Beach.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Infrastructure Element and the Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Miami Beach. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including solid waste removal and stormwater drainage.

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EXHIBIT "BB" - DESCRIPTION OF REQUIRED DEVELOPMENT PERMITS

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Development Agreement:

1. Design Review Board, Planning Board, and/or Board of Adjustment approvals, pursuant to Chapter 118 of the City of Miami Beach Code.
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. Public Works Permit, Water and Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Any variances or waivers that may be required pursuant to Chapters 114 through 142 of the City of Miami Beach Code
12. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Development and Ground Lease Agreement, including but not limited to restrictive covenants in lieu of unity of title